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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

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9 ANYES KIM,

10 Plaintiff,

11 v.

12 STATE FARM FIRE & CASUALTY
13 COMPANY,

14 Defendant.

15 C17-1395 TSZ

16 ORDER

17 THIS MATTER comes before the Court on a motion for partial summary
18 judgment, docket no. 22, brought by defendant State Farm Fire and Casualty Company¹
19 (“State Farm”). Having reviewed all papers filed in support of, and in opposition to, the
20 motion,² the Court enters the following order.

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¹ In the motion, counsel identified the moving party as State Farm Mutual Automobile Insurance
22 Company, see Motion at 1 (docket no. 22), but a subsequent declaration by a Field Assignment
23 Team Manager for State Farm clarifies that the insurance policy at issue in this litigation was
underwritten by State Farm Fire and Casualty Company, which has been properly named as the
sole defendant, see Tiersma Decl. at ¶ 6 & Ex. 3 (docket no. 30).

24 ² In addition to (i) State Farm’s motion, docket no. 22, and the supporting declaration of its
25 counsel, docket no. 23, (ii) plaintiff’s response, docket no. 27, and the declaration of her
26 attorney, docket no. 28, and (iii) State Farm’s reply, docket no. 29, the Court has considered the
27 declaration of Carrie Tiersma, docket no. 30, which was filed in response to the Court’s direction
28 to provide copies of certain letters.

1 **Background**

2 Plaintiff Anyes Kim was injured on September 11, 2012, while a passenger in a
3 2007 Nissan Frontier owned and driven by her fiancé Joseph Browder. See Exs. 3 & 4 to
4 Kirkpatrick Decl. (docket nos. 23-3 & 23-4). Plaintiff did not have any key for, and had
5 never driven, the Nissan, but during the time she and Browder had been living together,
6 she had ridden in the truck approximately once per week on “date night,” usually a
7 Sunday. Id. At the time of the accident, which the parties agree was caused by an
8 uninsured driver, plaintiff had insurance through State Farm for her own vehicle, a 2008
9 Toyota Scion. See Def.’s Mot. at 2-3 (docket no. 22); Ex. 3 to Kirkpatrick Decl. (docket
10 no. 23-3 at 3). Plaintiff’s policy contained a personal injury protection (“PIP”) provision,
11 but Browder’s policy for the Nissan Frontier did not. See Compl. at ¶¶ 4.6 & 4.7 (docket
12 no. 1-2); Answer at ¶¶ 4.6 & 4.7 (docket no. 7). Both plaintiff’s and Browder’s policies
13 offered uninsured motorist (“UIM”) coverage, which is not at issue in the pending motion
14 for partial summary judgment.

15 By letter dated December 19, 2012, State Farm denied PIP benefits to plaintiff
16 pursuant to the following exclusion: “**THERE IS NO COVERAGE FOR AN INSURED**
17 **... WHO IS OCCUPYING A MOTOR VEHICLE ... FURNISHED FOR YOUR**
18 **REGULAR USE IF IT IS NOT YOUR CAR OR A NEWLY ACQUIRED CAR.**” See
19 Ex. 1 to Kirkpatrick Decl. (docket no. 23-1 at 7) (emphasis in original); Tiersma Decl. at
20 ¶¶ 4-7 & Exs. 2 & 3. On August 16, 2017, plaintiff served on the Washington State
21 Insurance Commissioner a complaint against State Farm alleging breach of contract,
22 insurance bad faith, violation of Washington’s Consumer Protection Act (“CPA”), and

1 violation of Washington's Insurance Fair Conduct Act ("IFCA"). See Summons &
2 Compl. (docket no. 1-2). The complaint was later filed in King County Superior Court,
3 and the action was removed by State Farm on September 15, 2017. See Notice of
4 Removal (docket no. 1).

5 **Discussion**

6 State Farm moves for summary judgment (i) as to the extra-contractual (bad faith,
7 CPA, and IFCA) claims on the ground that they are time barred, (ii) with regard to the
8 contractual and extra-contractual claims relating to the denial of PIP benefits on the basis
9 of the earlier-quoted "regular use" exclusion, and (iii) with respect to the CPA claim on
10 the theory that such claim may not be premised on the denial of insurance benefits for
11 personal injuries. State Farm's arguments concerning the limitations period have merit
12 and, as a result, the extra-contractual claims must be dismissed and the Court need not
13 reach the separate issue of whether plaintiff may pursue a CPA claim in connection with
14 the denial of PIP benefits. As to plaintiff's breach of contract claim relating to the denial
15 of PIP benefits, the Court concludes that questions of fact and issues of law preclude
16 summary judgment.

17 **A. Standard for Summary Judgment**

18 The Court shall grant summary judgment if no genuine dispute of material fact
19 exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
20 56(a). The moving party bears the initial burden of demonstrating the absence of a
21 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A
22 fact is material if it might affect the outcome of the suit under the governing law.

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1 1 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To survive a motion for
2 summary judgment, the adverse party must present affirmative evidence, which “is to be
3 believed” and from which all “justifiable inferences” are to be favorably drawn. *Id.* at
4 255, 257. When the record, taken as a whole, could not, however, lead a rational trier of
5 fact to find for the non-moving party on matters as to which such party will bear the
6 burden of proof at trial, summary judgment is warranted. *See Matsushita Elec. Indus.*
7 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *see also Celotex*, 477 U.S. at 322-
8 23.

9 9 **B. Limitations Periods for Extra-Contractual Claims**

10 The parties do not dispute that both insurance bad faith and IFCA claims have a
11 limitations period of three years or that a CPA claim must be brought within four years of
12 its accrual. *See* RCW 4.16.080(2); RCW 19.86.120. The parties disagree, however,
13 concerning when the limitations periods began to run on plaintiff’s extra-contractual
14 claims. Although State Farm denied PIP benefits by letter dated December 19, 2012,
15 plaintiff contends that her bad faith, IFCA, and CPA claims, which were brought almost
16 five years later, are timely under a “continuing tort” theory because State Farm continued
17 to respond to her lawyer’s efforts to change its mind. Plaintiff cites no authority for such
18 proposition, and the Court concludes it has no merit. *See Dees v. Allstate Ins. Co.*, 933 F.
19 Supp. 2d 1299, 1306-07 (W.D. Wash. 2013) (citing *Lenk v. Life Ins. Co. of N. Am.*, 2010
20 WL 5173207 at *2 (E.D. Wash. Dec. 13, 2010) (concluding that an insurance bad faith
21 claim accrues at the time that coverage is denied)).

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1 C. **Personal Injury Protection Benefits**

2 State Farm contends that the PIP provision in the policy for plaintiff's Toyota
3 Scion excluded coverage because plaintiff was injured while occupying a motor vehicle
4 (her fiancé's Nissan Frontier) that was furnished for her regular use. State Farm's
5 argument requires the Court to interpret language ("furnished for . . . regular use") that is
6 not defined in the policy. To do so, the Court must construe the insurance contract as a
7 whole, giving the policy the "fair, reasonable, and sensible construction" that an average
8 person purchasing insurance would. See Vision One, LLC v. Phila. Indem. Ins. Co., 174
9 Wn.2d 501, 512, 276 P.3d 300 (2012); see also Panorama Vill. Condo. Owners Ass'n Bd.
10 of Dirs. v. Allstate Ins. Co., 144 Wn.2d 130, 137, 26 P.3d 910 (2001). Under Washington
11 law, inclusionary clauses are liberally construed in favor of coverage, while exclusionary
12 provisions are interpreted strictly against the insurer. See Assurance Co. of Am. v. Wall
13 & Assocs. LLC of Olympia, 379 F.3d 557, 560 (9th Cir. 2004).

14 In support of its assertion that a vehicle, which plaintiff never drove and had no
15 key to operate, was furnished for her regular use, State Farm cites three cases, Anderson
16 v. State Farm Mut. Auto. Ins. Co., 2007 WL 1577870 (W.D. Wash. May 30, 2007),
17 Grange Ins. Ass'n v. MacKenzie, 103 Wn.2d 708, 694 P.2d 1087 (1985), and Nelson v.
18 Mut. of Enumclaw, 128 Wn. App. 72, 115 P.3d 332 (2005). In all of these cases,
19 however, the denial of coverage concerned the **driver** of a vehicle deemed furnished for
20 his or her regular use. Anderson, 2007 WL 1577870 at *1 ("Plaintiff was driving and
21 [her child] M.A. sat directly behind her in the backseat."); MacKenzie, 103 Wn.2d at 710
22 ("George, his wife, and James were riding in James's Ford. George, as always, was

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1 driving.”); *Nelson*, 128 Wn. App. at 74 (“The vehicle accident occurred in October 2000,
2 while Ms. Nelson worked as a substitute driver for a rural route mail carrier in Odessa,
3 Washington. . . . When Ms. Nelson substituted for Mr. Frederick, she drove his
4 Saturn.”). State Farm has offered no authority for the proposition that a vehicle in which
5 an individual is occasionally a passenger, but which the person has never driven and for
6 which the person has no key, is furnished for his or her regular use. State Farm simply
7 has not met its burden of establishing an absence of genuine disputes of material fact or
8 entitlement to judgment as a matter of law with respect to plaintiff’s breach of contract
9 claim relating to the denial of PIP benefits.

10 **Conclusion**

11 For the foregoing reasons, the Court ORDERS:

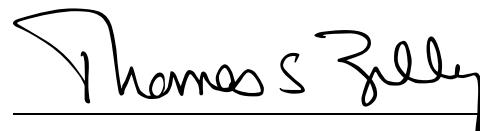
12 (1) State Farm’s motion for partial summary judgment, docket no. 22, is
13 GRANTED in part and DENIED in part. Plaintiff’s insurance bad faith, CPA, and IFCA
14 claims are DISMISSED with prejudice as time barred. State Farm’s motion is otherwise
15 DENIED.

16 (2) The Clerk is directed to send a copy of this Order to all counsel of record.

17 IT IS SO ORDERED.

18 Dated this 7th day of February, 2019.

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Thomas S. Zilly
United States District Judge